

77-3644/2


OLC 77-0800/-

Office of Legislative Counsel

8 March 1977

TO: Commander McMahon

For Admiral Turner's meeting at the White House, attached is background and an action plan changing the structure of oversight in the Congress.


Deputy Legislative Counsel

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EXECUTIVE REGISTRY FILE *White House*

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ACTION PLAN - CONGRESSIONAL OVERSIGHT
INTELLIGENCE COMMUNITY

I. OBJECTIVE

A. Executive Branch - Achieve an oversight structure in the Congress having the best prospects for safeguarding sensitive intelligence details which must be shared with the Congress.

B. Congress - Assure that the Intelligence Community is appropriately subject to the congressional powers of appropriations, legislation, oversight, and investigation.

II. PROBLEM

A. Fractionation of congressional committee jurisdiction and the absence of uniform House and Senate rules restricting access to and disclosure of sensitive intelligence details leads to extensive proliferation of such information to congressional committees, committee staff and other Members.

1. House -

a. Oversight - Under House rules legislation, oversight, and special oversight authority for CIA alone vests in the four committees (Armed Services, Appropriations, House International Relations, and Government Operations). Moreover, any other committee of the House can assert jurisdiction over the CIA for any activity or matter which such committee asserts falls within their jurisdiction.

b. House Rule XI - Provide to all Members of the House access to all committee records and, unless specifically excepted, to all committee hearings.

c. Appropriations - Appropriation hearings are held by the Defense Appropriations Subcommittee and the House Budget Committee is entitled to budget figures. During the Appropriations hearings an extensive and sensitive record of budgetary hearings is made and is available to all Members of the House.

d. Covert Action - Pursuant to the Hughes-Ryan Amendment covert action findings are reported to the oversight Subcommittees of the House Armed Services, Appropriations, and International Relations Committees.

2. Senate -

a. Oversight - Despite an assertion of exclusive jurisdiction over CIA and the DCI, S. Res. 400, establishing the Senate Select Committee on Intelligence, provides that any other committee may study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee. Moreover, except for legislation concerning the CIA and DCI, any legislation reported by the SSCI shall be referred to another standing committee if the matter relates to the jurisdiction of that committee and referral is requested.

b. Appropriations - Appropriation hearings are held by the Appropriations Committee; the Senate Budget Committee is entitled to budget figures, and there is an authorization requirement for appropriations which may require sequential referral to standing committees other than the SSCI.

c. Covert Action - Pursuant to the Hughes-Ryan Amendment covert action findings are reported to the SSCI, to Senate Foreign Relations Committee, the Senate Appropriations Committee, and currently the Senate Armed Services Committee, although the latter committee does not hold hearings on covert actions and its interest in this matter may atrophy.

B. What is at stake is the credibility of the Congress in carrying out its legitimate functions and that of the Executive Branch in protecting sensitive operational details.

III. PROPOSAL PRINCIPLES

A. Establish either one joint committee for both Houses or if that is not acceptable to the Congress, a select committee in the House paralleling the SSCI. This could be accomplished either by resolution or by a statute similar to the Atomic Energy Act of 1954.

B. Provide the new committee with exclusive jurisdiction for all legislative functions, except for appropriations (withdrawals of appropriations from the Treasury to support the Intelligence Community will require some role for the Appropriations Committees). Such jurisdiction should include all covert action reporting, legislation, oversight and investigations.

C. Limit to the committee access to information on sensitive operational details provided by the Executive Branch to the new committee and the Appropriations Committees.

D. Provide firm rules for nondisclosure of such information by the new committee and the Appropriations Committees.

E. In order to vest exclusive jurisdiction in the committee for covert actions, a statute would be required to repeal or amend the Hughes-Ryan Amendment.

F. Assure the appointment to the committee of Members of a wide spectrum of political persuasion and competence in those areas of abuse which are of the greatest concern to the public.

G. Require the committee to investigate any complaint it receives from any Member or committee and to make a record of its findings available to the appropriate leadership of the Congress. This would assure the complaining Member or committee that appropriate action has been taken without, in the process, requiring disclosure of sensitive operational details outside of the committee or the leadership.

H. Adopt such other provisions currently found in S. Res. 400 which are not in conflict with the above principles.

IV. IMPLEMENTATION

A. In the interest of establishing a positive tone at the outset, authorize Admiral Turner, with the President's blessing, to make the rounds of those congressional committees who most profit from the Intelligence Community foreign intelligence product. This would be in keeping with Admiral Turner's plan to volunteer on a continuing basis such substantive intelligence information as would be helpful to such committees in their legislative responsibilities. The offer would include making available that which can be unclassified without degeneration of either intelligence sources and methods or national security interests. Classified briefings would be provided with the understanding that strict rules would be enforced against unauthorized disclosure. In the process, Admiral Turner will be in a sound position for explaining the absolute essentiality of protecting intelligence sources and methods and to elicit support for this fundamental principle.

B. The President should host a series of meetings with the leadership of both Houses and the Chairman and Ranking Minority Members of committees presently exercising some type of oversight responsibility with respect to the Intelligence Community, and particularly, the CIA (Tab A). Other Members who are influential because of their leadership position on committees should also be included (Tab B). Finally, Members not included in the above lists but who are most concerned about possible abuses by the Intelligence Community should be sought out to determine the extent to which the principles set forth in the Proposal would satisfy their interests that abuses would not be tolerated and would be appropriately investigated and acted upon (Tab C).

C. Intelligence oversight legislation introduced in the House as of 28 February 1977 is commented upon in Tab D.

Senate Appropriations Intelligence Operations Subcommittee

John L. McClellan (D., Ark.), Chairman
Milton Young (R., N. Dak.), Ranking Minority Member

Senate Armed Services Intelligence Subcommittee

John C. Stennis (D., Miss.), Chairman
Barry Goldwater (R., Ariz.), Ranking Minority Member

Senate Select Committee on Intelligence

Daniel K. Inouye (D., Hawaii), Chairman
Barry Goldwater (R., Ariz.), Ranking Minority Member

Senate Judiciary Committee

James O. Eastland (D., Miss.), Chairman
Strom Thurmond (R., S. Car.), Ranking Minority Member

Senate Foreign Relations Committee

John Sparkman (D., Ala.), Chairman
Clifford P. Case (R., N.J.), Ranking Minority Member

Senate Governmental Affairs Committee

Abraham Ribicoff (D., Conn.), Chairman
Charles Percy (R., Ill.), Ranking Minority Member

House Appropriations Committee

George H. Mahon (D., Texas), Chairman
Jack Edwards (R., Ala.), Ranking Minority Member
Elford Cederberg (R., Mich.), ex-officio member

House Armed Services Intelligence and Military Application of Nuclear
Energy Subcommittee

Melvin Price (D., Ill.), Chairman
Bob Wilson (R., Calif.), Ranking Minority Member

House International Relations Committee

Clement J. Zablocki (D., Wis.), Chairman
William Broomfield (R., Mich.), Ranking Minority Member

House Government Operations Committee

Jack Brooks (D., Texas), Chairman
Frank Horton (R., N. Y.), Ranking Minority Member

House Judiciary Committee

Peter W. Rodino (D., N. J.), Chairman
Robert McClory (R., Ill.), Ranking Minority Member

Leadership of the House and Senate
and Other Important Members

SENATE

James O. Eastland (D., Miss.), President pro tempore
Hubert H. Humphrey (D., Minn.), Deputy President pro tempore
Robert C. Byrd (D., W. Va.), Majority Leader
Alan Cranston (D., Calif.), Majority Whip
Daniel K. Inouye (D., Hawaii), Secretary, Democratic Conference
Howard H. Baker (R., Tenn.), Minority Leader
Ted Stevens (R., Alaska), Minority Whip
John G. Tower (R., Texas), Policy Committee Chairman

HOUSE

Thomas P. O'Neill (D., Mass.), Speaker of the House
James Wright (D., Texas), Majority Leader
John Brademas (D., Ind.), Majority Whip
Tom Foley (D., Wash.), Chairman Democratic Caucus
John J. Rhodes (R., Ariz.), Minority Leader
Robert H. Michel (R., Ill.), Minority Whip
John B. Anderson (R., Ill.), Chairman Party Conference

Other Important Members
Including Those Most Concerned About Abuses

Representative John E. Moss (D., Calif.) - Father of the Freedom of Information Act and an outspoken advocate of openness in Government. He is an articulate spokesman in opposition to overclassification and executive privilege. He is a plaintiff in the AT&T litigation regarding access to details of National security wiretaps.

Representative Donald M. Fraser (D., Minn.) - Chairman of the International Organizations Subcommittee of the House International Relations Committee, and a long time advocate of human rights. He will be having an investigation of foreign intelligence services' activities in the U.S.

Representative Lee Hamilton (D., Ind.)

Representative Lester Wolff (D., N.Y.)

Representative Morris Udall (D., Ariz.)

Representative Paul McCloskey (R., Calif.)

Representative John McFall (D., Calif.) - Former Majority Whip. Although not presently a member of the House leadership, he is a well respected senior member.

- * Representative Robert W. Kastenmeier (D., Wis.)
- * Representative Jonathan Bingham (D., N.Y.)
- * Representative Leo J. Ryan (D., Calif.)
- * Representative Robert Giaimo (D., Conn.)

* The above Representatives are critics of intelligence abuses and are members held in high esteem by their colleagues.

Representative Dante Fascell (D., Fla.) - He is an active member of the House International Relations Committee and Chairman of its Inter-American Affairs Subcommittee.

Representative Edward Derwinski (R., Ill.) - A senior Republican member who has been an outspoken supporter of the Intelligence Community in the House.

- * Representative Les Aspin (D., Wis.)
- * Representative Ronald Dellums (D., Calif.)

* Both are critics of the Intelligence Community and have authored reform legislation in this Congress. Mr. Aspin is a member of the House Armed Services Committee and therefore familiar with intelligence products. Mr. Dellums was a member of the Pike Committee and is presently a member of the Intelligence Operations Subcommittee of the House Armed Services Committee.

Representative Michael Harrington (D., Mass.)

Representative John Erlenborn (R., Ill.) - Influential Republican member of the House Government Operations Committee. He is held in high esteem, more so than Mr. Horton, Ranking Minority Member of the Committee.

Representative Parren Mitchell (D., Md.) - Chairman of the Congressional Black Caucus.

INTELLIGENCE OVERSIGHT LEGISLATION
INTRODUCED IN THE
HOUSE OF REPRESENTATIVES
AS OF
28 FEBRUARY 1977

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II. House Committee Oversight Legislation

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HOUSE OVERSIGHT LEGISLATION

as of 28 February 1977

Since the opening of the 95th Congress, several bills, joint resolutions and simple resolutions dealing with House oversight of the Intelligence Community have been introduced. All are pending in the Rules Committee and no immediate action on them is expected. Their major provisions are outlined below.

I. Joint Committee Oversight Legislation

A. H.R. 291 - Mr. Conte

--Would establish a Joint Committee on Intelligence Oversight.

--18 members; five from majority and four from minority in each House; must include a majority and minority member from Armed Services, International Relations Committee in the House and from Armed Services, Foreign Relations and Appropriations Committees in the Senate.

--Conduct oversight of foreign intelligence activities of CIA, DIA, NSA, INR, all military intelligence and the foreign intelligence activities of any other department, bureau or agency.

--Exercise exclusive jurisdiction over the legislative authorization for the organizations above and all matters relating primarily to their functions would be referred to the Committee.

--Heads of the above organizations would be required to keep the Committee fully and currently informed with respect to all foreign intelligence activities and operations and the Committee could order reports regarding matters within its jurisdiction.

--The Committee would establish guidelines in accordance with those of the Executive branch for classification of all information originating within it and would establish guidelines for access to its records for all Members of Congress or their designees who have the appropriate clearances.

--No provision for declassifying information.

--Committee would keep a record of all actions including any votes.

B. H.R. 370 - Mr. Frenzel

--Would establish a Joint Committee on Intelligence Oversight.

--14 members, four from the majority and three from the minority in each House.

--Committee will study and investigate activities of CIA, FBI, Secret Service, DIA, NSA and the activities of any other Government organization which pertain to intelligence gathering or surveillance.

--The heads of the above organizations will keep the Committee fully and currently informed of matters within its jurisdiction, and the Committee can require reports.

--All bills, resolutions, etc., dealing with the above organizations will be referred to the Committee and no bill, etc., will be considered by either House until reported by the Committee.

--No funds may be appropriated for intelligence or surveillance activities unless authorized by legislation passed after enactment of the bill.

--Committee could classify information originating within it in accordance with Executive branch standards.

--No provision for declassifying.

--No provision for making records available to other Members of Congress.

--Committee would keep a record of all actions including votes.

C. H.R. 1009 - Mr. Gary A. Myers

--This bill is identical to H.R. 291.

D. H.R. 2990 - Mr. Frenzel

--Would create a Joint Committee on Intelligence Operations.

--18 members; five from majority and four from minority in each House; must include a majority and minority member from the House Committees on Armed Services, Foreign Relations and Appropriations. No member may serve more than six years.

--Committee would have exclusive legislative and oversight jurisdiction over the foreign intelligence activities of CIA, DIA, NSA, INR, all military intelligence and any other agency or department to extent it engages in foreign intelligence activities.

--The DCI would keep the Committee fully and currently informed about the activities of any of the above organizations, but the Committee could order a report from any agency.

--Committee would set up classification guidelines consistent with those of the Executive branch.

--Committee would establish guidelines for making records and data available to any Member of Congress or his designee who has appropriate security clearances.

--Establishes a criminal penalty for disclosure of committee material or foreign intelligence information without Committee approval.

--Committee would keep a record of all actions, including votes.

--Bill would amend Hughes-Ryan to provide for reporting only to this Committee and give the Committee a veto over the action.

--No authorization requirement for appropriations.

E. H. Con. Res. 9 - Mr. Boland

--Would establish a Joint Committee on Information and Intelligence.

--14 members; Speaker of the House and President of Senate would appoint seven each, but no more than four from each House may be from the same party.

--Remainder of Resolution is a duplicate of H. Con. Res. 10.

II. House Committee Oversight Legislation

A. H. Res. 82 - Mr. Bennett

--Would establish a Select Committee on Intelligence.

--15 members; one from majority and minority on Appropriations, Armed Services, International Relations and Judiciary Committees; plus four majority and three minority at large. Majority and minority leaders are ex officio members.

- No member can serve more than eight years.
- Committee would make periodic reports to House, but in so doing would not make any unauthorized disclosure of classified information.
- DCI, Secretary of Defense, Secretary of State and Director of the FBI would make an annual report to Committee on their intelligence activities and on foreign activities directed against the United States. An unclassified version which would not require revealing sources and methods of finding may be made public.
- Committee would give its views and estimates to the Bureau of the Budget.
- Would require all employees to agree in writing to abide by Rules of the House and the Committee and obtain proper security clearance before being granted access to classified information.
- The Committee on Standards of Official Conduct would investigate unauthorized disclosures of classified information and recommend appropriate action.
- Head of each department will keep the Committee currently and fully informed of all intelligence activities, including anticipated ones. This is not a condition precedent for implementation.
- No funds can be appropriated for intelligence activities for any fiscal year after September 1977 unless authorized by a bill or joint resolution passed by the House in the same or preceding year.
- Committee would study Community's analytical capability, charter question, Community organization, cover and clandestine activities, improving protection of intelligence secrets, and providing for disclosure when secrecy not necessary, establishing a standing committee on intelligence or a joint committee, authorization of intelligence funds and the desirability of disclosure of amounts.
- Does not contain any provisions permitting authorization of disclosure of sensitive information.

B. H. Res. 204 - Mr. Aspin

- Would establish a standing Committee on Intelligence.

--13 members; one-third from Armed Services, one-third from International Relations, and rest from membership of other standing committees; may serve six years in a ten-year period.

--Jurisdiction over matters including authorizations, pertaining to the DCI, the CIA and the intelligence activities of rest of Government; exclusive jurisdiction over DCI and CIA, shared with other committees for remainder.

--Committee would make periodic reports to the House on intelligence activities.

--DCI and Secretaries of State and Defense and the Director of the FBI would make annual reports to the Committee, an unclassified version of which could be made public; head of each agency engaged in intelligence activities would keep Committee fully and currently informed of such activities, but this is not a condition precedent to the activity.

--All employees of Committee would be required to sign secrecy oaths; Committee would adopt rules insuring the protection of materials in its care; Committee would establish rules of access for other Members.

--Would establish procedure for public disclosure of information; Committee on Standards of Official Conduct would investigate unauthorized disclosures.

--Would require an authorization passed by the House in same or preceding fiscal year before money can be appropriated for intelligence activities.

--Committee would study intelligence analysis capabilities, charter question, organization of intelligence activities, conduct of covert and clandestine activities and procedure for informing Congress, protection of necessary intelligence secrets and shall recommend needed legislation in these areas.

C. H. Res. 335 - Mr. Pike et al

--Establish a standing committee of the House on Intelligence.

--9 to 13 members appointed by Speaker of the House in consultation with minority leader, membership should reflect the political ratio of the House.

--No Member may serve for more than six continuous years; no staff members shall serve for more than six years.

--All matters concerning the CIA, DCI and the intelligence activities of all other agencies and departments of the Government would be referred to the Committee; the Committee would have exclusive jurisdiction over matters regarding the CIA and DCI and overall authorizations.

--No funds shall be appropriated for intelligence activities unless authorized by a bill or joint resolution passed by the House in the same or preceding year.

--DCI, Secretaries of State and Defense and the Director of the FBI would make annual reports on intelligence activities to the Committee, an unclassified version of which could be made public; Committee shall make periodic and regular reports to the House.

--All employees must have signed a secrecy oath and received a security clearance from the DCI before they have access to any classified information.

--Establishes a procedure for Committee to disclose information classified by the Executive branch.

--Committee may make classified information available to other Members, but it must keep a record of it and the Member may not disclose the information.

--Committee on Standards of Official Conduct will investigate unauthorized disclosures.

--Head of each department or agency shall keep Committee fully and currently informed about intelligence activities, including significant anticipated ones, but this is not a condition precedent for implementation.

--Committee will study and report on U.S. intelligence analytical capabilities, charter question, organization of Intelligence Community, conduct of covert and clandestine activities and method of reporting them to Congress, protection of valid intelligence secrets.

D. H. Con Res. 10 - Mr. Boland

--Establishes a Committee on Information and Intelligence.

--Speaker of the House appoints Members; no more than half from same party, cannot serve for more than six years.

--CIA, USIA and any other agency or department within the Executive branch conducting information and intelligence activities

would give to the Committee any information regarding its activities that the Committee would require to carry out its duties.

--Committee would study and make recommendations concerning the activities of information and intelligence agencies, the relationship between these agencies and U.S. based corporations abroad, problems of gathering information and intelligence information and its proper utilization.

--Committee would be able to classify information originating therein, in accordance with Executive branch standards.

--Committee would establish safeguards for protecting classified information.

--All bills, resolutions, etc., relating primarily to any information or intelligence agency of the U.S. shall be referred to the Committee.

77-3644
7 March 1977

MEMORANDUM FOR: See Distribution

SUBJECT : Follow-up to the President's 5 March Memorandum to Various Addressees Including Admiral Turner (ER 77-3644)

1. The Vice President will chair a meeting at 1645 hours, 8 March, and the agenda is substantially as follows, and attendees will be Secretary Vance, Attorney General Bell, Dr. Brzezinski, Admiral Turner, Counsel to the President Lipshutz, and Dr. Schlesinger.

a. A brief discussion of the IOB. Purpose is to review the operation of the IOB in order to get a fresh recommendation in the form of a note to the President on the functions of the IOB, with the objective to strengthen the role of the IOB oversight function.

b. Vice President's general discussion of the same issues raised at his press conference. See Washington Post article of 5 March, "Mondale Eyes Civil Penalties for Leaks," (attached).

c. Who gets what intelligence information in the Executive Branch, what remedies there are and improprieties on part of the Intelligence Community. What penalties there are now or could be developed for unauthorized disclosure.

d. Who gets what in the Legislative Branch and how to cut down on the number of people who get this information and at same time how do we continue to shape our legislative requirements. How to be responsive; i. e., get through our necessary appropriations, oversight committee hearings, and legislative requirements and still cut down on the number of people who have access. BCE Note: Mr. Knoche's letter to Vice President Mondale may be relevant (attached).

2. The purpose of the meeting is to undertake general discussions of the guidelines that might be developed to cover sanctions for disclosure and whether one needs additional criminal penalties. It is the President's desire to obtain some resolution of what appears to be a difference of opinion between Vice President Mondale and Admiral Turner and the Executive Branch.

EXECUTIVE REGISTRY FILE *what* *Turner*

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3. It will be useful to Admiral Turner if we can provide him with facts about incidents of disclosure within the Intelligence Community, how often specific cases, etc.

Hurriedly,

[Redacted Signature]

B. C. Evans
Executive Secretary

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Attachments

[Redacted Attachments]

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Mondale Eyes Civil Penalties for Leaks

MONDALE, From AI

The Vice President said he had not discussed the issue with Turner or with President Carter, who said at his last press conference that he believed such leaks could be "extremely damaging."

The discussion was provoked by the publication by The Washington Post of information that the CIA had supplied Jordan's King Hussein with millions of dollars over a period of years for both personal and intelligence uses.

Mondale, who had previously said he was unaware of those payments when he was a member of the 1975-76 Senate committee investigating the CIA, told Post reporters and editors that his memory may have been mistaken.

"I did not recall hearing about the Hussein thing," he said, "but I have checked since, and I am told that at least the records show that I was at a meeting where that was reported. I just plain don't remember it."

Mondale said he thought "many functions" subsidized through such payments were "perfectly legitimate," but said he was not fully briefed on "the specific grant or whatever you call it" to Hussein.

He said he supported the President's efforts to reduce the number of executive branch employees with access to such information and hoped Congress would reduce the numbers of its members who received such briefings.

Mondale said a reduction in the number of officials given such information could be achieved without damaging the principle of political accountability by the intelligence agencies to the President and Congress.

He also said he would have no objections to dismissal from office or other civil penalties being invoked against officials who violate a pledge of confidentiality on secret materials, but he ruled out criminal penalties of any kind.

In the interview, the Vice President also strongly defended Carter's "human rights" campaign as both effective and principled.

"There have been several examples around the world of political prisoners being released and emigres being permitted to leave," he said. "I think there is evidence that when this country speaks in meaningful, consistent ways about human rights and the people around the world get the idea that we might mean it, there are very desirable reactions in a host of societies."

On domestic issues, Mondale said he thought relations between the new administration and Congress are "better than the press reports." But he also said Carter "feels very deeply" about the 19 water projects he cut from the budget and might be willing to risk a veto battle with Congress on the issue.

The President omitted funds for 19

major Corps of Engineers and Bureau of Reclamation projects from his budget, provoking cries of pain and outrage from the legislators in the affected states.

Some members have speculated that Carter would use the projects as bargaining chips to get energy and other controversial legislation through Congress, but Mondale said "I know for a fact" that is not the case.

"I went to him personally when I heard what he was planning," I said. "This is going to be tough politically." He said, "I know it, but I feel very deeply about it." And I don't control waste of this kind. I don't know how you can get a hold of the budget."

Mondale said Carter "does not want to get into government the way we had it . . . under some of the previous Presidents, but that is a remedy that is available if he feels deeply about something."

But, despite this threatened action, Mondale said he thought the "collective criteria" of executive-branch relations are good. Citing recent victories on reorganization authority, the budget and the economic stimulus package and a series of nominations, the Vice President said things are "moving quite well."

He also took an optimistic view of the appointments process, adding that "it's taken us longer than we expected" to fill departmental posts, but predicting that "two months from now . . . I'm not sure how serious it will be."

The Vice President said there were several reasons for the slowdown in sending nominations to Congress for confirmation.

"We've simply swamped" the FBI with names, he said, slowing the typical clearance period from 10 days to four or five weeks. Strict conflict-of-interest standards have required "a good deal of time" for some nominees to "rearrange their affairs."

The President's desire to give his Cabinet appointees a major vote in staffing their departments and the search for qualified women and minority applicants have also entailed delays, Mondale said.

Finally, "consultation" with members of Congress have often taken "unbelievable amounts of time," he said.

"I was given one particular job, and at the end of three weeks I told the President I thought we should abolish the office. No matter who was recommended, there was somebody else that didn't like him."

But, Mondale said, "the tempo is picking up much more rapidly" in appointments, and the problem should diminish.

As for his own role, Mondale said, that despite the problems between past Vice Presidents and Presidents, "President Carter and I get along perfectly as far as I can tell."



VICE PRESIDENT MONDALE eyes civil penalties

Secrets Leaks Not Criminal, Mondale Says

By David S. Broder
Washington Post Staff Writer

Disagreeing with the newly named director of the Central Intelligence Agency, Vice President Mondale said yesterday he is "personally opposed" to the imposition of any criminal penalties on government officials who allow national security secrets to become public.

Mondale said he would support some form of "civil remedies for unauthorized disclosure," but disagreed with the suggestion by Adm. Stansfield Turner, the new CIA director, for criminal penalties on national security leaks.

"I would find it very difficult to accept the system of criminal penalties," Mondale said in an interview with The Washington Post. "I don't think it works and I don't think it should work."

Referring to his study of past abuses by intelligence agencies when he was a member of a Senate investigating committee, Mondale said he had concluded that "the best protection the President has from abuse . . . of his authority by subordinates is the fear that they may be caught and they may read about it in the press."

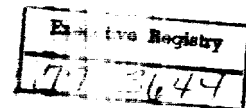
Mondale was the highest ranking administration official to discuss the subject of security leaks since Turner told senators at his confirmation hearing that he would "certainly be very amenable" to developing and "advocating criminal legislation to stop leaks by security officers."

See MONDALE, A4, Col. 5.

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THE WHITE HOUSE
WASHINGTON

3-5-77

To Mondale, Vance, Bell, Brzez.
inski, Turner, Lipschutz

Please arrange a two-to-
three hour meeting early next
week to give me a recom-
mendation on overall policy
and individual cases concerning
intelligence and national security.

The Vice President should
preside.

Subsequently I will meet
with appropriate Congressional
Leaders.

J. Carter

White House

(EX-100) 11

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 WASHINGTON, D.C. 20505

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| 77-3516 |

25 February 1977

The Vice-President
 The White House
 Washington, D. C. 20500

Dear Mr. Vice-President:

In accordance with your suggestion, we have reviewed the problems arising from the unauthorized disclosure and publication of information relating to clandestine Agency operations. We believe there are several areas where modifications in the manner and form in which the Agency reports on highly sensitive clandestine operations to reviewing authorities in the Executive and Legislative Branches of government could immeasurably improve the security of this information without materially affecting oversight of the Agency.

The two enclosed memoranda suggest changes in the procedures under which we transmit sensitive information outside the Agency, changes we believe will help prevent further unauthorized disclosures of sensitive information. One concerns proposals relating to Agency reporting to Congressional authorities and the other relates to Agency reporting within the Executive Branch. I have taken the liberty of sending a copy to Dr. Brzezinski.

Respectfully,

E.H. Knoche
 E.H. Knoche
 Acting Director

Enclosure



~~TOP SECRET EYES ONLY~~

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MEMORANDUM

SUBJECT: Proposals to Improve Security of Sensitive Information
Disseminated Within the Executive Branch

Proposals Affecting Reporting to the Special Coordination
Committee (SCC), the SCC Special Activities Working Group
(SCC/SAWG), and the National Security Council (NSC)

- A. Currently the Agency is required to report to these groups periodically on covert action operations and sensitive intelligence collection programs. The following options would limit the flow of sensitive documentation through these channels and establish tighter and more effective controls over sensitive documents:
1. Limit to the maximum extent possible compendium reports that place into a single document detailed information on all ongoing covert action and sensitive intelligence collection programs. Specifically, eliminate the requirement for a comprehensive written semi-annual report to the NSC on ongoing covert action and sensitive intelligence programs. A more flexible requirement might call for the NSC to determine in the case of each program the timing of periodic reviews.
 2. Adopt a procedure whereby, at the discretion of the National Security Advisor, the SCC/SAWG can be bypassed on highly sensitive programs. In these cases, proposals would be distributed directly to the SCC principals on an Eyes Only basis.
 3. Discontinue the practice whereby working drafts of SCC papers are distributed in advance to members of the SCC/SAWG. Future working drafts would be under the control of the SCC/SAWG staff secretary at all times. Under this arrangement working drafts would be distributed in the White House Situation Room prior to the SCC/SAWG meeting and returned to the SCC/SAWG secretary for retention or destruction at the end of the meeting.
 4. Number, assign by name, and log all papers sent to the SCC and the SCC/SAWG.

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5. Require that all documents sent to SSC principals other than the DCI be returned to the NSC for retention/destruction upon completion of the review/approval process.
 6. Adopt a mandatory rule that SCC documents will not be copied.
 7. Adopt standards to minimize the amount of sensitive operational detail to be included in SCC proposals such as the identity of persons, organizations, and sensitive technical data.
 8. Consider establishing a new category of compartmented clearance for information on covert action and sensitive collection operations. Require separate secrecy agreements for all persons within the Executive Branch who have this clearance, establish a "bigot" list (a list of persons cleared) for the new category, and restrict access to such information to an absolute "need-to-know" basis. Strictly enforce procedures to require prior clearance and execution of a secrecy agreement before permitting access to documents or attendance at meetings for the discussion of such information.
- B. Under E.O. 11905, the intelligence agencies are required to report known or possible illegalities and improprieties to the Intelligence Oversight Board. There appears to be no problem at present in the initial reporting channels. However, the IOB does report to the President, and on occasion may feel it necessary to consult with other government agencies/departments, which in turn may report to the President through additional channels. Steps should be taken to review these channels of reporting, following initial submissions by the intelligence agencies, to ensure restricted access to documents and proper arrangements for their protection.
- C. Consideration should be given to providing reports to IOB orally in instances of great sensitivity.

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MEMORANDUM

SUBJECT: Proposals to Improve the Security of Sensitive Information Provided to Congress

I. The greatest problem with regard to providing sensitive information to Congress is the large and growing number of congressional committees, and Members of Congress and staff personnel who have access to many of this nation's most sensitive intelligence secrets. For example, under the terms of the Hughes-Ryan Amendment and Senate Resolution 400, seven committees of Congress now receive varying degrees and types of sensitive operational intelligence information. Some 55 Members serve on these committees and some 15 committee staff members are cleared to receive information. Further, House rules provide that all 435 members of the House of Representatives can technically demand access to sensitive intelligence information and to attend committee briefings at which intelligence matters are discussed.

II. Changes which Could be Implemented by Simply Altering Procedures Under Existing Laws

A. Agree that all reporting to Congress on sensitive intelligence matters be oral with no transcripts.

This may not be feasible with regard to appropriations matters or to Case Act reporting, subjects which require written notification to Congress and transmittal of the relevant documentation itself.

B. Restrict the amount and specificity of written budget material provided Congress.

C. Make more uniform than at present the procedures governing access by congressional staff personnel to sensitive briefings and material, and reduce the number of congressional staffers granted access thereto.

The rules of the Senate Select Committee, which spell out procedures on non-disclosure, establish secrecy oaths, and place tight controls on paper flow, afford some guidelines in this area.

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- D. Establish a Joint Congressional Intelligence Committee to reduce present Congressional access to sensitive intelligence information. This would minimize proliferation of such information while meeting legitimate Congressional requirements for oversight of the National Foreign Intelligence Program. The Joint Committee should have exclusive jurisdiction over budget and appropriations matters.
- E. Establish an Intelligence Committee in the House with exclusive oversight and legislative responsibility over the CIA until such time as a Joint Congressional Committee can be established.
- F. Obtain Congressional acceptance of jurisdictional exclusivity of the Senate Select Committee and the proposed House Intelligence Committee.
- G. Modify House and Senate rules on procedures to specifically provide protection for intelligence information.
 - 1. In the House, such rules should allow the intelligence oversight committee or committees to go into executive session at the committee's option; to limit attendance as necessary to protect against disclosure or further dissemination of sensitive intelligence information; and to allow these committees discretion on access to their records.
 - 2. Make the rules and procedures adopted by the Senate Select Committee on Intelligence applicable to the entire Senate.
- H. Obtain acceptance by the Senate and House oversight committees of a procedure for the joint signature by designated Members or their staff and the appropriate Executive Branch officers of Executive/Congressional communications involving sensitive intelligence matters. This would create a new category of documents which would technically constitute neither Committee records (thus being unavailable to other Members under House Rule 11) nor Agency records subject to Freedom of Information Act requests.

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III. Options Requiring Changes in Existing Law

- A. Repeal or amend the Hughes-Ryan Amendment in recognition that the inclusive oversight responsibilities of the Senate Select Committee and the proposed House Intelligence Committee would provide that those committees receive reports on operations other than activities intended solely for obtaining necessary intelligence.
- B. Amend the Hughes-Ryan Amendment to specifically provide that only a single joint committee or single committees in each house--depending on changes to the present oversight committee structure--would receive the reports currently required.
- C. Enact legislation to provide criminal penalties for unauthorized disclosure of intelligence sources and methods by any person in authorized possession of such information as a result of an official relationship with the U.S. Government. Such legislation would act as a deterrent to public disclosure of sensitive intelligence information but, of course, should not extend to disclosures pursuant to lawful Congressional demand.

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cc: Dr. Brzezinski

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STAT